Supreme Court of the United States.

No 331.—October Term, 1906.

Adams Express Company, Plaintiff in Error, vs. The Commonwealth of Kentucky. } In error to the Court of Appeals of the State of Kentucky.

[May 13, 1907.]

On February 17, 1904, a grand jury returned into the Circuit Court of Laurel County, Kentucky, an indictment against Joe Newland and the Adams Express Company, charging that "the said Joe Newland and the Adams Express Company, the latter being a partnership engaged in and carrying on the business of a common carrier of packages, goods, wares and merchandise, by the method known as express . . . did in Laurel County, Kentucky, on the 17th day of February, 1904, unlawfully and willfully carry for and deliver to George Meece a parcel, package, shipment and quantity of intoxicating, spirituous, vinous and malt liquors . . . to be and which was paid for on delivery at East Bernstadt in said Laurel County, same being at the time a shipment commonly known and called C. O. D. shipments, . . . said shipment and delivery being made and done at the time by said Joe Newland and said Adams Express Company in the usual course of business of said Adams Express Company."

Subsequently the action was dismissed as to Newland, and on a plea of not guilty the case was tried before a jury and resulted in a verdict finding the company guilty and fixing the fine at sixty dollars. The instructions of the court were as follows:

"Gentlemen of the Jury: 1. If you shall believe from the evidence, beyond a reasonable doubt, that the defendant, Adams Express Company, is a copartnership, formed of persons whose names and number were unknown to the grand jury that found this indictment, and who lived out of the State of Kentucky, but are doing business in the State of Kentucky and in Laurel County, Kentucky, and under the firm name and style of 'Adams Express Company,' and that the said Adams Express Company, in this county and within twelve months next before the finding of the indictment herein, knowingly delivered to the witness, George Meece, spirituous, vinous or malt liquors in quantities of less than five gallons at the time mentioned by the witness and received the pay therefor, and that said company received any pay whatever for its service in that behalf, then you should find the defendant guilty and fix its punishment at any fine not less than $60.00 nor more than $100.00, in your discretion, according to proof.

"2. The court says to the jury that if they shall believe from the evidence, beyond a reasonable doubt, that the agent or agents of the defend-

ant's company that accepted, received, transported or delivered the package mentioned in evidence by the witness Meece, knew, or might, by the exercise of such care as persons of ordinary prudence are accustomed to use in the ordinary transactions of life, have known the contents of the package delivered to the witness, then the defendant company is chargeable with such knowledge, and should be held to know the contents of such package."

Judgment was entered on the verdict, which was affirmed by the Court of Appeals of the State, 87 S. W. Rep. 1111, 27 Ky. Law Reporter, 1096, and from that court the case was brought here on writ of error. The act under which the prosecution was had is subsection 4 of section 2557*b*, Kentucky Statutes, 1903, commonly called the "C. O. D." law, which is part of the general local option law as amended in 1902, and which reads:

"All the shipments of spirituous, vinous or malt liquors, to be paid for on delivery, commonly called C. O. D. shipments, into any county, city, town, district or precinct where this act is in force shall be unlawful and shall be deemed sales of such liquors at the place where the money is paid or the goods delivered; the carrier and his agents selling or delivering such goods shall be liable jointly with the vendor thereof."

Mr. Justice BREWER delivered the opinion of the Court.

The testimony showed that the package, containing a gallon of whiskey, was shipped from Cincinnati, Ohio, to George Meece, at East Bernstadt, Kentucky. The transaction was therefore one of interstate commerce, and within the exclusive jurisdiction of Congress. The Kentucky statute is obviously an attempt to regulate such interstate commerce. This is hardly questioned by the Court of Appeals, and is beyond dispute under the decisions of this court.

In *Vance* v. *Vandercook Company* (No. 1), 170 U. S. 438, 444, Mr. Justice White, delivering the opinion of the court, said:

"Equally well established is the proposition that the right to send liquors from one State into another, and the act of sending the same, is interstate commerce, the regulation whereof has been committed by the Constitution of the United States to Congress, and, hence, that a State law which denies such a right, or substantially interferes with or hampers the same, is in conflict with the Constitution of the United States."

In *Rhodes* v. *Iowa*, 170 U. S. 412, 426, it was held that the Wilson Act "was not intended to and did not cause the power of the State to attach to an interstate commerce shipment, whilst the merchandise was in transit under such shipment, and until its arrival at the point of destination and delivery there to the consignee."

The Court of Appeals sustained the judgment upon these facts: Meece testified that he had not ordered the whiskey; that he was not expecting any from Cincinnati, but, on going with his brother to the company's office

at East Bernstadt, was told that it was there awaiting him; that he requested the agent to hold it until the succeeding Saturday, when he would come, pay for and take it away; and that on that day he did so, paying $3.85 for the whiskey, the express charges having been prepaid at Cincinnati. The court held that, by reason of the retention of the package by the agent, the company ceased to hold it as carrier, and had become a mere bailee or warehouseman; that, therefore, the statute, as applied to the transaction, was not a regulation of commerce; and, further, that as Meece had not ordered the whiskey there was no contract for the sale of it in Cincinnati, but only by the company at East Bernstadt, in Kentucky; that while there was no testimony showing that the company's agent at Cincinnati knew that the whiskey had not been ordered by Meece, yet its agent in Kentucky was so informed, and, therefore, the company was possessed, through its agent, of knowledge that there was no interstate transaction, and with that knowledge sold the whiskey to Meece. But that the agent consented to hold the whiskey until Saturday did not destroy the character of the transaction as one of interstate commerce is settled by the recent case of *Heyman* v. *Southern Railway Company*, 203 U. S. 270. In that case whiskey had been forwarded to a party in Charleston, South Carolina, and after its arrival at Charleston was placed in the warehouse of the railroad company by its agent and there seized by constables, asserting their right so to do under the dispensary law of South Carolina. The point was made and sustained by the Supreme Court of the State of Georgia, in which State an action had been brought against the company for the value of the goods, that when the goods were placed in the warehouse the carrier was thenceforward liable only as a warehouseman. In passing upon this contention we said (p. 276):

"As the general principle is that goods moving in interstate commerce cease to be such commerce only after delivery and sale in the original package, and as the settled rule is that the Wilson law was not an abdication of the power of Congress to regulate interstate commerce, since that law simply affects an incident of such commerce by allowing the State power to attach after delivery and before sale, we are not concerned with whether, under the law of any particular State, the liability of a railroad company as carrier ceases and becomes that of a warehouseman on the goods reaching their ultimate destination before notice and before the expiration of a reasonable time for the consignee to receive the goods from the carrier. For, whatever may be the divergent legal rules in the several States concerning the precise time when the liability of a carrier as such in respect to the carriage of goods ends, they cannot affect the general principle as to when an interstate shipment ceases to be under the protection of the commerce clause of the Constitution, and thereby comes under the control of the State authority."

With reference to the testimony as to the knowledge by the company of the fact that the whiskey had not been ordered by the consignee, it is suffi-

cient to say that the averment in the indictment is that the express company was engaged in the business of a common carrier of packages, etc., and that the shipment and delivery were made and done in the usual course of its business. This excludes necessarily the assumption that the transaction was one of sale by the express company at East Bernstadt, and of course the company was under no obligation to offer testimony in support of that which the State admitted to be the fact.

We do not mean to intimate that an express company may not also be engaged in selling liquor in a State contrary to its laws, or that the fact that the consignee did not order a shipment might not be evidence for a jury to consider upon the question whether the company was not, in addition to its express business, also selling liquor contrary to the statutes. It is enough to hold, as we do, that under the averments of this indictment such testimony is immaterial. It is, of course, a question of fact whether a carrier is confining itself strictly to its business as a carrier, or participating in illegal sales. The consignor alone may be trying to evade the statute. He may forward the liquors in the expectation that the consignee will, when informed of their arrival, take and pay for them. So the fact that there is no previous order by the consignee may not be conclusive of the carrier's wrongdoing, but still it is entitled to consideration in determining that question.

Much as we may sympathize with the efforts to put a stop to the sale of intoxicating liquors in defiance of the policy of a State we are not at liberty to recognize any rule which will nullify or tend to weaken the power vested by the Constitution in Congress over interstate commerce.

The judgment of the Court of Appeals of Kentucky is reversed and the case remanded for further proceedings not inconsistent with this opinion.

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This case differs from the preceding in the fact that it was tried by the court without a jury. In all other respects it is substantially the same.